



November 17, 1999

Mr. Kevin W. Kapitan  
Assistant City Attorney  
Police Legal Advisor  
The City of Fort Worth  
350 West Belknap Street  
Fort Worth, Texas 76134

OR99-3300

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128908.

The City of Fort Worth (the “city”) received a request for “crime scene photos from the August 10<sup>th</sup>, 1982 Lake Worth, Texas murders committed by Larry Keith Robison.” You contend that the requested photographs are excepted from disclosure pursuant to, *inter alia*, section 552.108 of the Government Code.<sup>1</sup>

You explain that

Robison has . . . filed a habeas writ, in an effort to secure a hearing as to his competency to receive the death penalty. The Texas Court of Criminal Appeals has granted same and directed that such a hearing occur, thereby staying the imposition of sentence. As a result, the Tarrant County Criminal District Attorneys’ [sic] Office has once again become directly involved in the prosecution of the habeas and the appellate effort, as well as the trial court’s proceedings. [Citations omitted.]

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection,

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<sup>1</sup>Because we resolve your request under section 552.108, we need not address the applicability of the other exceptions you raised.

investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or *prosecution* of crime.” (Emphasis added.) We believe that where a prosecuting attorney is seeking to defend a direct challenge of a sentence passed down by a trial court, such actions by the attorney constitute the “prosecution” of a criminal matter for purposes of section 552.108(a)(1). We conclude, therefore, that so long as the current habeas corpus action is pending, the city may withhold the requested photographs from the public until such time that the photographs are introduced into evidence during those proceedings. See Gov’t Code § 552.022(17) (information contained in public court record not excepted from public disclosure); cf. *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information in public court record not protected by common-law privacy).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William M. Walker  
Assistant Attorney General  
Open Records Division

WMW/RWP/ljp

Ref: ID# 128908

Encl. Submitted photographs

cc: Ms. Shoshanah Wolfson  
48 Hours  
524 West 57<sup>th</sup> Street  
New York, New York 10019  
(w/o enclosures)